

**LEGAL DUTIES AND OBLIGATIONS
OF MEMBERS
OF A CHURCH'S GOVERNING BODY**

Sources of Authority for Governance

- Constitution and Canons
 - Constitution and Canons of the Episcopal Church
 - Constitution and Canons of the Diocese of Olympia
- Washington State Nonprofit Corporation Act, chapter 24.03 RCW
- Other State laws
 - Uniform Prudent Management of Institutional Funds Act, chapter 24.55 RCW
 - Charitable Trust Act, chapter 11.110 RCW
- Federal Tax Law, Section 501(c)(3) of the Internal Revenue Code and related regulations
- Organizing Documents
 - Articles of Incorporation
 - Bylaws
 - Policies

Parish (state and canon law)

Washington nonprofit corporation

Governing body is the Vestry (Board of Directors of nonprofit corporation)

- **Articles of incorporation:**
 - The document that creates the organization
 - Filed with secretary of state
- **Bylaws**
 - Operating rules for the Vestry and parish
 - Many detailed requirements in Canon 9 and Chapter 24.03 RCW
 - Provisions for and qualifications of members (voting)
 - Number and term of vestry members
 - Identification and duties of officers and term of officers
 - Meetings of the members and vestry and notice for such meetings
 - Committees (vestry and advisory)

Mission (canon law)

Unincorporated nonprofit association (controlled by Diocese)

- Governing body is the Bishop's Committee

Bylaws (highly recommended, but not required)

- Many detailed requirements for governance in Canon 11, including
- Provisions for and qualifications of members,
- Number and term of Bishop's Committee members,
- Identification and duties of officers and term of officers,
- Elections,
- Meetings and notices for meetings of congregation and Bishop's Committee

Role of Rector/Vicar in Governance

- The rector and vicar are each *ex officio* members of the vestry or bishop's committee and by canon, each presides at meetings of the governing body and meetings of members unless the rector or vicar delegates that authority to the senior warden.
- The vestry cannot meet without the presence of the rector, unless the rector is absent from the parish or fails to attend despite proper notice of the meeting. The bishop's committee cannot hold a special meeting without the presence of the vicar.
- As *ex officio* member and presider, the rector does not count toward the quorum and votes only in the event of a tie.
- In a mission, the vicar may remove a member of the bishop's committee under the circumstances specified in Canon 11, Section 3.g.

Acting within the Scope of Authority

- Authority flows from the governing body
- Governing body may delegate authority, e.g., through bylaws and/or resolutions
 - Committees
 - Officers
 - Staff
- Ultimate responsibility for oversight remains with the governing body

Importance of Acting in Accordance with governing body's responsibilities

- Hold meetings and keep minutes
- Review governing documents regularly
- Keep accurate records
- Comply with Constitution and Canons and applicable law

Governing Body Action

- The body acts by meeting of a quorum of its members or by unanimous written consent
 - No “email meetings”
 - No proxies
 - Conference calls permitted
- The body acts collectively by vote

Fiduciary Duties

- Duty of Care
- Duty of Loyalty
- Duty of Obedience

Standard of Care

- Members must perform their duties (including service on committees):
 - In good faith
 - In a manner reasonably believed to be in the best interest of the governing body
 - With the care of an ordinarily prudent person in a like position in similar circumstances

Standard of Care – Help Available

- Members of governing bodies may rely on information from:
 - **Officers or Office of the Bishop staff** believed to be reliable and competent in the matter;
 - **Professional/Expert** as to matters which the director believes to be within such person's expertise; or
 - **Committees**
 - on which the member does not serve,
 - with duly designated authority
 - which committee the member believes merits confidence

Duty of Loyalty

- A member owes undivided loyalty to, and must deal fairly, honestly and act in the best interests of the governing body, holding the interest of the church before your own interest
 - Confidentiality
 - Conflicts of Interest
 - Actual
 - Perceived

Duty of Loyalty (cont'd)

- Conflicts of interest
 - Have a written conflicts of interest policy
 - Use an annual questionnaire to identify and disclose potential conflicts
 - The interested party should not participate in or be present for the vote on a transaction for which a conflict exists
 - Determining factor is whether the transaction is fair to the church

Duty of Care

- Act in good faith
- Reasonable Inquiry – Be Informed
- Exercise a reasonable amount of diligence, attention, care and skill
- Exercise independent judgement
- Two aspects: Oversight and informed decision making
- Can rely on officers, employees, experts and committees
- Attend meetings – absence is a way to fail

Duty of Obedience

- Comply with law
- Comply with Constitution and Canons, bylaws and policies
- Comply with mission of the church